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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA

4 v.

16 CR 019 (PGG)
Conference

5 MAALIK ALIM JONES

6 Defendant

-----x

7 New York, N.Y.
8 July 27, 2017
3:30 p.m.

9 Before:

10 HON. PAUL G. GARDEPHE

11 District Judge

12 APPEARANCES

13 JOON H. KIM

14 Acting United States Attorney for the
Southern District of New York

15 ANDREW DeFILIPPIS

SHAWN CROWLEY

16 Assistant United States Attorney

17 SEAN M. MAHER

18 Attorney for Defendant

19 -Also Present-

20 Alan Jones, FBI (Special Agent)

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(In open court; case called)

THE DEPUTY CLERK: Is the government ready?

MR. DeFILIPPIS: Yes. Good afternoon, your Honor.

Andrew DeFilippis and Shawn Crowley for the government. With us at counsel table is FBI Special Agent Alan Jones.

THE DEPUTY CLERK: Is the defendant ready?

MR. MAHER: Yes. Good afternoon, your Honor.

Sean Maher representing Mr. Jones, who is present here in court with me.

THE COURT: We are here to discuss a suppression hearing that's going to take place at some point before the trial, which is scheduled for December 4. Let me ask just a couple of questions.

So, is the government going to be introducing at trial statements that Mr. Jones allegedly made to Somali officials with no U.S. Government people in the room?

MR. DeFILIPPIS: We will, your Honor. As we laid out in our briefs, the statements that he made and the dates following his arrest, we do intend to offer those at trial.

THE COURT: OK.

MR. DeFILIPPIS: Sorry. Certain statements, the ones we laid out in our briefs.

THE COURT: So, the government concedes that there is a need for an evidentiary hearing here in light of the

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1 declaration that Mr. Jones has submitted. So today we're going
2 to talk about when that should happen. The government has
3 asked that the suppression hearing take place within some
4 proximity to the trial because Somali officials, I gather, are
5 going to have to testify at the suppression hearing as well as
6 at the trial.

7 As I said, the trial date is December 4. Let me also
8 confirm, is the trial expected to take about a week? Is that
9 your best estimate?

10 MR. DeFILIPPIS: Your Honor, to be safe, I think the
11 government would say two weeks for its case.

12 THE COURT: OK, two weeks. How long do you think the
13 suppression hearing would go?

14 MR. DeFILIPPIS: Your Honor, we expect that we could
15 complete our witnesses within two days budgeting for
16 cross-examination, and that obviously doesn't include any
17 defense witnesses.

18 MR. MAHER: That might be a little ambitious.

19 THE COURT: You think it will go longer?

20 MR. MAHER: I think it could with the cross of these
21 types of witnesses and the circumstances that were involved, I
22 think it could be lengthier than two days potentially.

23 THE COURT: What do you think as sort of an outside?
24 Four days?

25 MR. MAHER: Perhaps.

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1 THE COURT: The defense says four days.

2 MR. MAHER: Potentially. At this point, I don't know
3 what the government's witnesses are and how many and what their
4 base of knowledge is.

5 THE COURT: OK.

6 MR. DeFILIPPIS: Just to give your Honor some context,
7 we don't expect we'd call more than a handful of witnesses:
8 Two, three, four witnesses would be about what we expect.

9 THE COURT: Mr. Maher, is it possible that your client
10 may testify at the suppression hearing?

11 MR. MAHER: Possible? Sure.

12 THE COURT: All right. So we're looking at sometime
13 in mid to late November, I guess.

14 Mr. Maher, I think you have a trial, don't you? When
15 does that finish?

16 MR. MAHER: Well, I just was in court. My days are
17 bleeding together this week. Either yesterday or the day
18 before, before Judge Abrams right now that trial is scheduled
19 to start October 18, but Judge Abrams asked because of a new
20 trial that she is going to be involved with if we could push
21 back that start date to perhaps November 1 or November 6, so
22 she has asked the parties to give her input. I have not given
23 her input on that yet. That trial is expected to be around the
24 same length as this, around two weeks or so.

25 One thing that I have raised with the government about

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1 the schedule that they have informed me about, it's my
2 understanding that the Somali officials wouldn't be available
3 to be in the United States until November. I have a concern
4 based on my work on a case with a similar type of interaction
5 with foreign government officials in West Africa and the length
6 of that hearing and the post hearing briefing that occurred
7 that I likely am going to want to avail myself to post hearing
8 briefing if the Court permits it.

9 Some of these issues can be rather complicated, so I
10 would anticipate that I would need, I would hope, at least two
11 weeks after a hearing to get the transcripts, go through them
12 all, because they could be very dense, and to present the Court
13 with any more salient arguments. So that then would be right
14 up against the trial date that we have currently, if not blow
15 through that in giving the government an opportunity to respond
16 and me an opportunity to reply. Again, this is based upon what
17 I understand are the witnesses' availability based on various
18 constrictions.

19 THE COURT: All right. Let me hear from the
20 government on that subject. Before I do, just for my
21 information, do you anticipate the Somali witnesses will
22 testify through an interpreter?

23 MR. DeFILIPPIS: Yes, your Honor, we expect they will
24 need an interpreter.

25 THE COURT: OK. So, I understand that you only want

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1 to bring them over here once. What is the government proposing
2 as to when we would have the suppression hearing?

3 MR. DeFILIPPIS: Your Honor, the government is willing
4 to work on as accelerated a schedule as the Court is willing.
5 As defense counsel pointed out, the FBI's estimate of when
6 those Somali witnesses can get here is that they can have them
7 here by early November, and so we will be prepared to have a
8 hearing, you know, shortly after that as soon as they are here.

9 We also could have the witnesses appear at a
10 suppression hearing and return for a trial. Obviously, it
11 would be easier to do the former, but we will make our
12 witnesses available either way.

13 THE COURT: So I'm available to do it. I think,
14 Mr. Maher, the ball is kind of in your court because of the
15 issue that you raise about Judge Abrams wanting to push the
16 date and so forth.

17 MR. MAHER: Yes.

18 THE COURT: We could do the hearing the week of the
19 13th. I'm available from certainly the week of the 13th, maybe
20 even earlier, but certainly the week of the 13th. That would
21 allow time for the hearing and the briefing and so forth, but
22 I'm a little unclear about -- you've got to get back, I guess,
23 to Judge Abrams about her request, right? You're betwixt and
24 between here.

25 MR. MAHER: Yes. So my concern is that that trial

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1 with Judge Abrams is going to be reset either to November 1 or
2 November 6, and it will be at least two weeks long. So knowing
3 that, and then being able then to change gears, prepare for
4 this, I think that just might be too tight. I've spoken to my
5 client about potential tweaks to the schedule and it is
6 something I've also discussed with the government.

7 I would consent to leaving the December 4 date and
8 leaving that week or however much time to complete the
9 suppression hearing, and then have the time after that to do
10 any post hearing briefing. And if the Court was amenable and
11 had the time to have the trial then start in January, I would
12 propose either January 29 or February 5.

13 THE COURT: What's the government's reaction to that?

14 MR. DeFILIPPIS: Your Honor, as I said, we are
15 interested in getting these proceedings done as quickly as
16 possible. We will work on whatever schedule the Court sets.
17 So whichever schedule the Court sets, we will meet it.

18 THE COURT: Let me talk with my deputy.

19 (Pause)

20 THE COURT: So my inclination based on what I've heard
21 is to use the December 4 for the suppression hearing, but I
22 would want to begin the trial earlier than January 29. I want
23 it earlier in January than that. Do you have any problem in
24 January, Mr. Maher, that I should be aware of?

25 MR. MAHER: The 16th through the 19th I've been

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1 invited to teach at a trial program that I traditionally teach
2 at. I appreciate my participation in that program. If I have
3 a trial, obviously I couldn't do that, but that's the one
4 conflict that I try to protect.

5 MR. DeFILIPPIS: And, Judge, the government's only
6 concern is that while we will make our witnesses available on
7 any schedule, having too short a lapse between the December 4
8 hearing and a trial date would require them essentially to stay
9 here in New York -- it wouldn't make sense to send them back
10 and make them come back again. It would require them to stay
11 here over the holiday period in December and early January, and
12 that may be something that would, you know, pose an
13 inconvenience to them and not be feasible. So we just want to
14 flag that consideration.

15 THE COURT: I understand that, but let me make sure I
16 understand what you're saying. You're saying you wouldn't want
17 a trial date in early January, is that your point?

18 MR. DeFILIPPIS: Sorry, your Honor, just one moment.

19 (Pause)

20 MR. DeFILIPPIS: Your Honor, our understanding from
21 the FBI is that they would need more than -- if trial were to
22 begin on December 4 and take two weeks or three weeks, it would
23 not provide the witnesses enough essentially lag time to go
24 back. It would be too short a schedule on which to send them
25 home and come back, whereas we don't want them to stay here in

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1 New York for a full month between the suppression hearing and a
2 full trial.

3 THE COURT: We are not am talking about a trial on
4 December 4. I'm contemplating that we have a suppression
5 hearing.

6 MR. DeFILIPPIS: I misspoke, your Honor. Sorry.

7 THE COURT: So you're not in favor of a trial date in
8 early January. You want it later in January.

9 MR. DeFILIPPIS: That's right, your Honor, in order to
10 allow these witnesses to have enough time to go and come back.

11 THE COURT: Do you have a January calendar there? And
12 you've got this class that you want to teach, did you say it
13 was the 19th?

14 MR. MAHER: 16th through the 19th.

15 THE COURT: 16th through the 19th. So January 22 I
16 think is a Monday. Does that seem like an appropriate date?

17 MR. DeFILIPPIS: For the government, that's fine, your
18 Honor.

19 MR. MAHER: Could we start it the Tuesday then, the
20 23rd? Just in case there's any loose ends I need to tie up on
21 Monday.

22 THE COURT: I'm just waiting for a calendar. I need
23 to see the date. I want to start it on Monday. It's a
24 two-week trial, and I want to make sure we get it -- I don't
25 know how long the trial is going to be, but I'm told it could

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1 be two weeks. I certainly wouldn't want to have it spill over
2 into a third week just because we started it on a Tuesday, so,
3 no, I prefer to start on the 22nd. And if that's what the
4 parties want, I'm prepared to adjourn the trial then to the
5 22nd.

6 MR. MAHER: Very well.

7 THE COURT: OK?

8 MR. DeFILIPPIS: Fine, your Honor.

9 MR. MAHER: Thank you.

10 THE COURT: All right. That should leave us plenty of
11 time to resolve the issues regarding the suppression hearing,
12 the suppression motion, and it will also allow the witnesses to
13 fly back to their country, and I don't know if they celebrate
14 Christmas, but if they do, they will have their holidays and
15 then they can come back.

16 Does the government wish me to exclude time between
17 now and the 22nd?

18 MR. DeFILIPPIS: We do, your Honor, while the motion
19 is pending and so the defense can prepare for trial.

20 THE COURT: Is there any objection, Mr. Maher?

21 MR. MAHER: No.

22 THE COURT: I will exclude time between today and
23 January 22, 2018 pursuant to the Speedy Trial Act, 18 United
24 States Code, Section 3161(h)(7)(A) to permit, first of all, the
25 suppression hearing to take place, briefing with respect to the

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1 suppression issue, and preparation for trial. I do find that
2 the ends of justice served by the granting of this continuance
3 outweigh the best interests of the public and the defendant in
4 a speedy trial.

5 The order we issue will change the dates for pretrial
6 submissions in accordance with the fact that I've adjourned the
7 trial date.

8 Anything else we should talk about now?

9 MR. DeFILIPPIS: Not from the government, your Honor.

10 MR. MAHER: No. Thank you.

11 (Adjourned)